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EQUITY PROCEDURE IN FEDERAL COURTS AND ITS SUBORDINATION TO STATE PRACTICE.

In re Simons, 38 Sup. Ct. 497, it was held that, as it is the rule both at common law and in New York that breach of contract to bequeath a sum certain gives right to an action at law for damages, it was improper for a federal district court to transfer to equity side an action at law for damages for breach of such contract in a cause where jurisdiction was for diversity of citizenship because plaintiff was thereby deprived of a jury trial in an action at law.

Speaking of the ruling by the federal judge to order the cause transferred it was said by Justice Holmes, speaking for the Supreme Court, that: "We do not find sufficient ground for the opinion of the judge in the New York decisions. No doubt alleged contracts to make provision by will must be approached with great caution in the matter of proof, but there is no doubt that if passed they are valid so far as no statute intervenes. So much seems assumed by the order of the judge, and is the law we believe of New York as well as the other states and of England. But, if valid, we see no reason why a contract to bequeath a certain sum should not give a right of action for damages if broken, as certainly as a contract to pay the same sum in the contractor's life or at the moment of the contractor's death. * * * We have seen nothing that suggests an arbitrary departure by the courts of New York from the common law in cases like the present. If we are right, the order was wrong and deprived the plaintiff of her right to a trial by jury. It is an order that should be dealt with now before plaintiff is put to the difficulties and the courts to the inconvenience that would be raised by a severance that ultimately must be held to have been required under a mistake."

This question came up on application for mandamus to the judge of the district court and the rule was made absolute.

It is seen from the reasoning that the learned justice searched for the common law rule and he cited New York cases to prove there was no departure in New York therefrom.

The importance of the principle decided is quite great, because, apart from the question of denial of right to jury trial, equity procedure in United States courts is a vastly different thing from what it is in state courts.

We remember that a few years ago new rules for disposal of equity cases by federal courts were adopted by the Supreme Court. These rules supplanted those that were made in the early history of our country, now known as the old rules.

This Journal has had frequent occasion to refer to the new rules of the federal court as framed by U. S. Supreme Court and the great advance they made in making modern practice displace the old rules which came into existence in 1842 and lasted until they were superseded in 1912.

In 75 Cent. L. J., at page 385, these rules are set forth in full and then and since then there has been frequent reference in editorials and in contributed articles to the new and old rules and departures making for simplicity in procedure. 75 Cent. L. J. 384, 399, 410, 76 *ibid.* 212 and 77 *ibid.* 29.

Undoubtedly a great advance upon these archaic rules, as formerly recognized in England and because of the old rules in federal courts here having more a survival beyond their usefulness than there, was made by the new rules. But in equity practice in federal tribunals, there seemed many things existent in federal courts, in cases where jurisdiction depended on diversity of citizenship, that approached very nearly, if they did not, in fact, to an

actual disregard of fundamental rights in state courts, which are those of natural jurisdiction.

The decision we now instance seems an invitation to a challenge by suitors in federal courts of the exercise of power by federal courts administering equity jurisdiction.

That decision, at least, proclaims that where a right fundamental in character is guaranteed a suitor in a state court, as to remedies there obtaining, then if a federal court, because of some special fact like diversity of citizenship, obtains jurisdiction, these fundamental rights must be respected, no matter what may be the practice in the latter court.

This principle suggests that the rules adopted by our Supreme Court for equity procedure in federal courts, must be applied always subject to the rights enuring to suitors under state practice. How far this principle may be thought to extend in denying to federal courts any jurisdiction at all in equity, as equity, where under code practice of a state all distinctions between law and equity administration is abolished, is a subject we do not here enter upon but merely suggest this in the way of a *query*.

NOTES OF IMPORTANT DECISIONS.

POLICE POWER—REGULATION OF THE BUSINESS OF A BARBER.—In People v. Logan, 119 N. E. 913, decided by Supreme Court of Illinois, it is held, that it is within police power to require that a barber shall apply for license to a board of examiners and show that he has pursued a certain course of study and practice for a stated time to entitle him to a license as a barber, and exception in favor of all those practising barbering at the time the statute goes into effect within 90 days after its passage is not class legislation.

As justifying legislation regulating practice of the trade of a barber, it is said: "The trade of a barber keeps him in direct contact with the persons of his patrons and careless and unsanitary practices in his trade may induce diseases of the skin. Sycosis, popularly known as barbers' itch, is a common form of the disease of the face and scalp, propagated by the use of infected razors and brushes. Other and more serious diseases may also be similarly spread. It cannot be said that reasonable regulation of the trade of a barber has no relation to the health and safety of the public."

But this statute does nothing more than require that to obtain a barber's license, one must have studied and practiced his trade for at least three years somewhere in the states, and be possessed of requisite skill to shave, hair-cut and sharpen his tools and have sufficient knowledge about skin diseases not to aggravate them and spread them. But who is to certify to this skill if it is not provided? Then a fee of $3.00 is to be paid by each applicant, and annual renewal of $1.00 for a license.

It seems to us that the way in which the statute fails to provide any real sanitary safeguards stamps this measure as a revenue statute pure and simple. To attempt to dignify such a calling as a profession without any sort of safeguards in real professional knowledge and practice is to run police power into the ground, making it a mere camouflage for some ulterior purpose, such as restricting the avenues of useful employment. If barbers really wish a sort of close corporation they ought to take on some other obligation as that attaching to real professional life, such as is enjoyed by physicians and lawyers, who really exercise judgment in their practice.

A barber, however, if a good one, is nothing more than a high-class mechanic, and any high-class mechanic ought to know a clean tool he is called on to use, or what is clean lather he spreads on the face. To keep clean contributes not only to godliness but to health. For a barber to be dirty does not greatly help the godliness of his patrons. But neither does prolixity in monologue. How would it do to regulate this? It seems to us that the trade of a barber does not call on him to know things that are not greatly of common knowledge, which is something not acquired, but which presumptively exists with all of us. After a while hotel waiters and restaurant keepers will be required to qualify by study, so that diseased patrons may not be allowed to receive service from the wares they handle.

ADMIRALTY—IMPROVIDENT ORDER BY SUPERIOR CAUSING INJURY TO SEAMAN.—In Chelentis v. Luckenbach S. S. Co., 38 Sup. Ct. 501, it was held, that where a superior

officer directed a fireman on a steamship within the maritime jurisdiction of this country, to perform certain duties on deck during a heavy wind and a wave came aboard and knocked him down and broke his leg, no right of action accrued against the owners of the vessel, since under maritime law seamen cannot recover for injuries sustained through the negligence of master or other members of the crew except for expense of maintenance and cure. The liability for maintenance and cure is absolutely fixed and is not dependent upon negligence; but liability for indemnity is allowed under maritime law only in case of unseaworthiness of the ship and failure to keep in order the proper appliances appurtenant to the ship.

Reference was made to Act of Congress, approved March 4, 1915, which provides: "That, in any suit to recover damages for any injury sustained on board vessel or in its service, seamen having command shall not be held to be fellow servants with those under their authority." And it was held that this operated generally so there was no implied grant thereby to authorize the states to enact any legislation changing our national maritime law in any way. It was thought that the law of the sea as administered by federal courts should be looked to as to what it was, and there is nothing in such law that shows intention to impose upon ship owners the same measure of liability for injuries suffered by the crew while at sea, as the common law prescribes for employers in respect of their employes on shore. There was dissent by Justices Pitney, Brandeis and Clarke, but without opinion.

HOMICIDE — INTOXICATION AS EVIDENCE OF CULPABLE NEGLIGENCE IN MANSLAUGHTER.—In State v. Coulter, 204 S. W. 5, decided by Supreme Court of Missouri, a case in which defendant was prosecuted for causing the death of another for culpable negligence in the running of an automobile, the court instructed the jury as to what constituted culpable negligence and it permitted the introduction of evidence of defendant's intoxication as tending to show such negligence.

The court said: "The evidence as to defendant's intoxication was competent on the question as to his negligence (citing several civil cases). We have not been able to find any authority holding specifically that such evidence is competent in a criminal case, but there is no reason for making any distinction between a civil and a criminal case on this point. Under the Act of March 9, 1911, it was and is a misdemeanor to operate a motor while intoxicated. The evident reason for that statute is that intoxication is likely to cause intoxication on the part of one operating such a vehicle." It does not appear that there was given any special instruction limiting the effect of such evidence.

It seems to us that evidence of intoxication was competent only upon the theory that intoxication was part of the res gestae of an occurrence. It hardly might be said to be independent evidence in behalf of the state as tending to show culpable negligence in a charge of homicide.

This characterization of responsible negligence does not tend to take away the necessity of proving the intent necessary to constitute a crime. Any tendency of such evidence is rather in the way of disproving intent, than establishing it, where it shows intoxication.

We know that intoxication is admissible in the way of excusing crime, provided that one does not become intoxicated so as to prepare himself to carry out intent to commit crime. If having no intent to commit a crime he becomes intoxicated and his reason is so impaired, that his will no longer restrains him, this would be good matter in his defense, and the existence of such a statute as the court instances ought not to have any effect on this principle.

We think, therefore, that in the trial of such a case as was before the court, it was the duty of the trial court, as being bound to charge upon the whole case, whether specially requested or not, to have defined to the jury the effect of such evidence upon the question of intent to commit the offense charged.

RECENT DECISIONS BY THE NEW YORK COUNTY LAWYERS ASSOCIATION COMMITTEE ON PROFESSIONAL ETHICS.

QUESTION No. 150.

Solicitation of Employment; Relation to Third Person; Relation to Other Attorneys; Fomenting Disputes.—Patent attorney offering to impart useful information for compensation to attorneys for litigants or to patent attorneys of competitors of present patentees—disapproved; exploiting his own inventions, and imparting such information as means for such exploitation either before or after the issue of patents therefor—not improper.—I am not only an attorney

at law, but also admitted to practice before the United States Patent Office. I have through diligent effort, wide research and the application of scientific and linguistic knowledge become cognizant of facts in the history of certain arts which, in my opinion, if disclosed, would result in the defeat of certain broad claims to patent rights not only in pending litigation to which I am not a party, but in fields not involved in pending litigation. Working upon the information so obtained by my own diligent and exhaustive effort, I have also perfected certain inventions of my own which, I am satisfied, are no infringement in fact of the broad claims of present patentees. My knowledge is valuable; I am satisfied that I would be amply remunerated if I should disclose it to the attorneys for defendants in the pending litigation.

In the opinion of the Committee:

(a) Would I, being an attorney at law, be violating any principle of legal ethics if I should voluntarily apprise defendant's attorneys of the fact of my knowledge in the premises, and offer to furnish them with its details, for use in pending litigation, if adequately compensated?

(b) Would I be violating such principle, if I should proceed to file applications for patents for my own inventions, and after having claims allowed by the Patent Office, or after the issue of patents, to sell my patents or market them and in so selling or marketing them to make use of the said knowledge in order to demonstrate the fact that my patents do not infringe those now claiming the field?

(c) Would I be violating such principle, if I should endeavor to procure others to purchase my inventions and themselves to procure and enforce patents for the same?

(d) In fields not now involved in litigation would I be violating such principle if I should voluntarily offer for compensation to impart my knowledge to patent attorneys of competitors or present patentees?

ANSWER No. 150.

In the opinion of the committee, the several queries should be answered as follows:

(a) Yes.—Such communication, voluntarily made with the expectation and purpose of procuring professional employment as a lawyer, would be improper (See Canon 27 Am. Bar Asso.). And a lawyer is not absolved from his professional obligations by the fact that he is also a patent attorney or expert. It is equally improper for a lawyer to so volunteer to perform non-legal services for the purpose of defeating the claims of others.

(b) No.—Filing applications for patents by a lawyer, covering his own inventions, and the use of his knowledge of the patent-law or of the scientific principles involved in the patents, in effecting or furthering a sale of his patent rights, are unobjectionable.

(c) No.—A sale or other disposition of a lawyer's own inventions and discoveries to persons, in contemplation of patents upon the same being applied for and obtained by such persons, is in itself unobjectionable.

(d) Yes.—The answer to this question involves the same principle as that applied in the answer to sub-question (a), and the suggested conduct is equally objectionable.

QUESTION No. 151.

Employment—inconsistent — Accepting professional employment against former client in litigation arising out of contract drawn for him under former employment—Disapproved. —A and B, partners in the practice of law, are employed by X to draw a contract between X and Y. By the contract X licenses Y to use certain patents and Y agrees to pay X a royalty. The license agreement is drawn by A personally after consultation with the client.

Some time later X brings an action against Y to recover the royalty under the license agreement.

I wish to know whether, in the opinion of your committee,

(a) It will be unprofessional for A to appear as attorney for Y in the action;

(b) It will be unprofessional for A to try the cause as counsel for Y;

(c) It will be unprofessional for A to consult with the attorney of record or counsel for Y with reference to the proceedings in the action?

ANSWER No. 151.

In the opinion of the committee, it is improper for a lawyer to accept professional employment involving the construction of a contract which he has drawn for a former client, where his new employment brings him into a position adverse to the interests or claims under the contract, of the client under whose employment it was drawn. The committee accordingly answers each of the inquiries in the affirmative, assuming, as it does, that (c) implies that the consultation is in the interest of Y, and not in the interest of the former

UNIFORM STATE LEGISLATION.*

Many volumes have been written by learned men in Europe and America in exposition of the peculiar system of American Constitutional Government. Their conclusions might be summed up in the language of Chief Justice Chase based upon the words of the Constitution, and established by the arbitrament of the greatest Civil War in modern history, when he said that our Federal Government is "an indestructible union of indestructible states."[1] As the states are indestructible, either by their own act, or that of the Federal Government, and as the latter, by the very terms of the Constitution, is a government of delegated powers,[2] the sovereignty in all such jurisdictions not delegated, remains with the states. While this insures the most important safeguard of Democracy, local self-government, it carries with it the inconvenience of divergent systems of law. The difficulty has been felt from the earliest days. While our English forefathers brought with them to the shore of Massachusetts, and the banks of the James, the customary law of England, it was inevitable that the passage of time should bring about gradual differences in statutory enactments and judicial decisions, with a constantly increasing tendency to build up a distinct body of law in each of the former colonies, become by the successful result of the Revolution separate political entities. So far as the states were controlled by the dominating provisions of the national Constitution, they were held to uniformity by the power of the Judiciary, both State and Federal, with the Supreme Court of the United States as the ultimate appellate tribunal. There remained, however, a vast field of law where each state remained untrammeled by Constitutional limitations.

*This is a revision of an address to the New Hampshire Bar Association on July 6, 1918, by Hon. Walter George Smith.

(1) Texas v. White, 7 Wall. 700.

(2) Amendments, Art. X.

In the early colonial times, and indeed until the growth of population and the development of natural resources following the quickly increasing use of scientific discoveries in the arts, brought all parts of our great domain into close relationship, the lack of uniformity of law in the various states was comparatively little felt. But when the railroad and the telegraph revolutionized transportation and communication, and the demands of daily life made necessary the use of the wealth of all parts of the country by the people wherever living, business quickly overleapt state lines and began to feel keenly the divergent laws on many subjects, where among one homogeneous people uniformity should prevail.

The remedy for the evil, in its simplest form, can be found in depriving the states of their sovereignty in all matters where uniformity is requisite for the safe conduct of business and the protection of the individual in his domestic relations, by giving plenary power to Congress. But to do so is to throw upon the already overburdened machinery of our Federal Government burdens which it was not designed to bear. Such a course would mean a confession of failure of our Federal system to work out the problems of government under modern conditions,—a confession that the American ideal of local self-government is impossible of attainment, and it would remain only to erect in the place of the political structure built with such care, and maintained by the expenditure of so much blood and treasure, an imperial system, centralized and bureaucratic, where there would lie but one step to reach a despotism. Yet business knows no sentiment. The laws of trade follow economical principles; that government which is found by trial to be the most certain to give peace and order, will, in the long run, win over one not evolved from the customs and habits of the people, however perfect it may be in theory. American lawyers, as the result of their study of history and their experience in the workings of our system, European students, imbued

with the spirit of Democracy, but without the bias natural to an American, all who believe in the equality of opportunity under the law, would witness with dismay any change of our policy whereby our self-governing states became mere departments of a centralized imperial nation, by whatever name it might be called. It is against such a political system that the democracies of the world are now fighting to the death. Those who are faint-hearted or lukewarm in their devotion to the American idea of self-government, those who would amend the National Constitution so as to take from the states any essential domestic power, are unwittingly helping to undermine the pillars of Democracy.

If, then, the remedy for the uncertainties, inconveniences and dangers arising from the divergent laws of the different states is not to be found by a surrender of their powers to the National Government, where is it to be found? The remedy lies, it is submitted, in interstate agreements, or rather in the acceptance by the states of model laws of a uniform character, prepared by competent authority on the basis of the weight of authority. When in 1878, the American Bar Association was formed, it adopted a Constitution in which its object was set forth in these words:

"To advance the science of jurisprudence, promote the administration of justice and uniformity of legislation throughout the Union, uphold the honor of the profession of the law, and encourage cordial intercourse among the members of the American Bar."

The little handful of lawyers who laid the foundations of the American Bar Association have, for the most part, passed away. Their successors now number more than 10,000. The record of the Association's achievement in the forty years that have elapsed since its first meeting may be read in the Annual Reports of its proceedings,—a mine of wealth for the jurist and the statesman who would follow the development of our legal system during that marvellous period of history. In no department of its work has the Association been more successful than in bringing about uniformity of legislation. The machinery was developed by the appointment of a Committee on Uniform State Laws in 1889, whose functions became merely critical and advisory when the National Conference of Commissioners on Uniform State Laws came into being on the initiative of the State of New York in 1890. This Conference is composed of commissioners appointed sometimes by virtue of legislative authority, by the governors of the states, and sometimes without it, and meeting in annual convention before the sessions of the American Bar Association. Although a distinct organization, the commissioners are almost entirely members of the Association, and their treasury is generously aided by it. It works through committees, who employ draftsmen, as a rule, to formulate the acts reported to the Conference and subsequently recommended by that body, after careful revision, for adoption by the states. No member of the Conference receives compensation, and many not even their necessary expenses. Nevertheless the importance of the work, and the satisfaction of rendering valuable public service have secured to the Conference practising lawyers, judges and teachers of law of the first eminence. Obviously such a body is detached as far as possible from any personal or political bias or prejudice. The results of its deliberations are proportionately valuable. It was some years after its formation before it completed its first and most successful draft of a commercial Act on a subject of major importance,—the Negotiable Instruments Act. The suggestion that such an Act might be drawn was made at a meeting of the Alabama Bar Association in 1886, induced by the success of the English Bills of Exchange Act.[3] The English Act was in effect a codification of

(3) Am. Un. Com. Acts, p. 134.

a digest of the law relating to Bills of Exchange, prepared by M. D. Chalmers, an eminent English jurist. It had been in operation in England since 1882, and was adopted by all of her colonies. It was epoch-making, for it was the first important enactment of any branch of English mercantile law. The whole of the general principles of the law of Bills, Notes and Checks is contained in a single Act of 100 sections. Where a new question arises, not covered by the Act, it is expressly provided that the law merchant shall govern. With this example before them, the Conference retained the services of John J. Crawford of the New York Bar, as draftsman, and completed its revision of his work in 1896 and recommended it for adoption. It has since been adopted in fifty states and territories and the District of Columbia, thus bringing practical uniformity on this branch of the law, where before was uncertainty, diversity and confusion.

The principle upon which this Act has been drafted is that which has governed the Conference in all it has done: to reduce to the form of a statute those subjects that have been settled by decisions, and where the law is not absolutely settled, to follow the weight of authority. There has been no thought of bringing about reforms of the law, or of codifying of the whole body of the law, but where its substantive principles are settled, and where the subject is one upon which uniform state laws are demanded in the interest of business certainty, there a topical codification is the only appropriate way to attain the object in view. The success of Great Britain in following this method, as has been said, showed the way to America. So the Conference slowly, carefully, deliberately, sometimes after years of revision, has completed uniform laws upon Warehouse Receipts, Sales, Transfer of Stock, Bills of Lading, and Partnership, while Conditional Sales and Fraudulent Conveyances Acts are practically finished. How large a body of commercial law has been thus made uniform among the many states which have adopted these Acts will appear on a moment's reflection. What a boon to the business community is a standard law governing the negotiability of such documents of title as Warehouse Receipts, Certificates of Stock, and Bills of Lading becomes apparent when it is known that under these laws the possession of the document carries with it, excepting in the case of a thief or finder of a Warehouse Receipt, full power of negotiation. The vast wealth in the warehouses becomes liquid assets, as does stock in corporations and goods in transit. In clearly expressed, comparatively brief Acts, the whole law governing these subjects can be found almost at a glance, while in cases not covered the rules of the law merchant remain. Space does not permit a history and explanation of all the uniform Acts, even in outline. The commercial Acts have been carefully annotated and year by year they are being adopted in an increasingly large number of the states. When once adopted, the interpretation is left to the Courts, whose guide is that section now inserted into all the Acts:

"This Act shall be so interpreted as to effectuate its general purpose to make uniform the law of those states which adopt it."

Of course the whole purpose of these Acts would be defeated by diverse interpretation by the Courts of the different states; but with the example of the Supreme Court of the United States as a beacon, we can leave to the judiciary the responsibility of avoiding this danger."

"It is apparent," says Justice Hughes, "that if these uniform Acts are construed in the several states adopting them according to the former local views upon analogous subjects, we shall miss the desired uniformity, and we shall erect upon the foundation of uniform language separate legal structures as distinct as were the former varying laws. It is to prevent this result that the Uniform Warehouse Receipts Act expressly provides (Sec. 57, quoting

the language already given). This rule of construction requires that in order to accomplish the beneficent object, so far as this is possible under our dual system, the commercial law of the country, there should be taken into consideration the fundamental purpose of the Uniform Act, that it should not be regarded merely as an off-shoot of local law."[4] To same effect are decisions in State Appellate Courts.[5]

There are branches of the law other than commercial where uniformity is almost as much needed. Notably is this the case in the matter of execution and proof of wills, the acknowledgment of Deeds, the extradition of lunatics, the cold storage of provisions, workmen's compensation, child labor, family desertion, land registration, the use of the flag, marriage and marriage licenses and divorce. On each of these subjects the Conference has formulated Acts. While the commercial Acts have met with the more general acceptance, progress has been made with those relating to other subjects. The necessity for uniformity is not so pronounced in such matters as these, excepting, perhaps, in that relating to marriage and divorce. The history of the effort to bring about uniformity in divorce legislation with especial reference to jurisdiction and procedure is interesting. The Uniform Act is the only one bearing the recommendation of the Conference which was not drafted by it. In view of the many evils and uncertainties arising from divergent and inconsistent divorce laws, a congress of delegates from all but three of the states met at the invitation of the Governor of Pennsylvania, issued by virtue of an Act of the Legislature, in the City of Washington, February 22, 1906. This congress, after an adjourned session in Philadelphia later in the same year, formulated a draft of a uniform law outlining the general principles upon which the states were asked to reform existing statutes. The situation then and now would seem to be intolerable. Persons who are legitimately married in one state, may be married to another person in another state. Where the divorce laws of the domicile are strict, resort may be had to the Courts of another jurisdiction, the resulting confusion, the injustice to innocent parties, and especially to children, have been the theme of many writers. Our divorce laws are really a scandal, and it is not surprising that many despair of reform excepting through Amendment to the National Constitution, giving Congress jurisdiction,—really a counsel of despair.

The congress did not attempt to make the causes for divorce the same in all of the states, though in point of fact the causes suggested in its draft are already those recognized in perhaps four-fifths of all the states; but it did provide rules for jurisdiction and procedure which, if enacted, would do away with existing uncertainties and abate the divorce evil as far as is possible while any absolute divorce is permitted. All the sections of the Act are based on existing law in some of the states. It is, in point of fact, a composite of their best features. I take from another paper a condensed statement of the principal features:

"In order to bring a suit in divorce at least one of the parties must be a resident of the state, and have been so for two years, and must have resided in the state at the time the injury arose. If the cause of action is adultery or bigamy, however, two years' residence is not required. If a cause for divorce arises when the parties are living in another state, and either party has lived in the new state for two years, the action may be brought there, but not unless there is a good cause in the state in which they were living when it arose. If a party leaves his state of residence and moves to another state, and there obtains a divorce for a cause not recognized in the former state, his divorce will be void therein.

"Where personal process of the Court cannot be obtained, service may be made by publication. An injured party need not

(4) Com. Bank v. Canal, La., Bank, 259 U. S. 570.

(5) Rockfield v. Bank, 77 Ohio 311; Downey v. O'Keefe, 26 R. I. 521; Thorpe v. White, 188 Mass. 333. See Am. Un. Acts, page 182.

necessarily apply for absolute divorce, but may ask instead for a limited divorce, which merely causes a separation, without giving either the right to marry again. Abuse and frauds arising from secret hearings are corrected by requiring proof of all cases in the presence of the Court. Notice must be brought home to the defendant actually whenever his address can be ascertained. In all uncontested cases, and in any case where the Court deems it necessary or proper, a disinterested attorney may be assigned to defend the case. An interval of one year shall intervene between the decree on the merits of the case and the decree dissolving the marriage.

"The divorce of the parents shall not make their children illegitimate, except in cases of bigamy or other cause impossible to reconcile with legitimacy."

It is to be regretted that the public conscience has not yet been so aroused as to create a sentiment that the legislatures will obey by passing at least the jurisdictional provisions of this Act. So far it has been adopted by Delaware, New Jersey and Wisconsin.

The Uniform Marriage License Act has met not even as favorable consideration as the Divorce Act. Yet it is needed, for from hasty and improvident marriages arise many of the causes resulting in divorce. The Act provides that as an essential prerequisite of a valid marriage there shall be 1, a license to marry; 2, a duly authorized officiating person or recognized form of ceremony. By the adoption of this Act common law marriage would be abolished, as it is already in many of the states.

The Uniform Land Registration Act, which is an adaptation of the Torrens System, provides for the registration of land titles. As in the case of Workmen's Compensation Acts, there are now in many of the states Acts dealing with this subject, but they lack uniformity, which is desirable wherever possible. The great benefit of the Act would be to give land the attributes of a commercial asset, making it in a sense negotiable through the certificates by which, under this system, it would be represented.

The Conference has given no little consideration to the drafting of a Uniform Incorporation Act, which is one of the great needs of the country, but has not yet reached a stage where it is thought wise to submit the result of its work.

The drafting of Uniform Standard Policy of Insurance is in the hands of a Committee of the American Bar Association, and so also a Uniform Law on the subject of Carriers. Whether either or both of these drafts, when completed, will come to the Conference does not yet appear.

Enough has been said to show the scope and methods of the Conference and the progress it has made. It has demonstrated that it is feasible to secure uniformity where the communities of the several states are aroused to its necessity on any special subject. The commissioners are accustomed to ask approval of their work by the American Bar Association, and by the State Bar Association before the Acts are offered for adoption in the legislatures. They have attained such measure of success as has come to them because Chambers of Commerce, business and other associations have joined in urging the passage of the Acts. Legislatures are, as a rule, responsive to popular demand. All that is needed is a campaign of education. When the Bar of any one of the states, as experience has shown in Pennsylvania, New York, Ohio, Maryland, Massachusetts, Illinois, and elsewhere, puts itself back of any one of the Uniform measures, it invariably passes. The movement for uniformity has been obstructed in some of the older states by a vague conservatism based on a fear of codification. In the form presented by uniform state laws, the most determined opponent of general codification should find no cause for alarm. The example of Great Britain and her colonies, the excellent results already obtained in our own states, the sound and philosophic plan on which the Conference is working combine to show that the true remedy for the dangers and uncertainties of diverse state laws has been

found. It may be confidently believed that the movement will grow in strength and provide continually better evidence of the success of our dual system of government.

We are fighting now for the existence of the democratic against the autocratic principle of political philosophy. Our enemies from within are more dangerous than those from without, for their insidious attacks on the popular reverence for our well-tried Constitutional system bears sometimes a superficial appearance of sincerity. Let us beware above all things of the emotional influences that threaten our National Constitution by amendments foreign in spirit to the ideals we and our English ancestors before us have struggled through centuries to realize. If there be defects in our policy, the cure should not be attempted in a time of stress, but when we have won peace with justice, by united effort, and calm consideration can be given by the masses of the people by whom, in the long run, the blessings of free government have been won through wise leadership and by such leadership can alone be preserved.

WALTER GEORGE SMITH.

Philadelphia, Pa.

JUDICIAL SALE—SETTING ASIDE.

LILLARD V. GRAVES ET AL.

Supreme Court of Appeals of Virginia, June 13, 1918.

96 S. E. 169.

The circuit court could not set aside a judicial sale on account of inadequacy of price, based alone on the opinion of the commissioner who made the sale, as against the presumption in favor of the highest bid as a just criterion of the value of the property, and the uncontradicted evidence afforded by affidavits of 14 responsible citizens and landowners, whose property either adjoined or lay in the immediate vicinity of the land in controversy, that it brought a fair price.

WHITTLE, P.: This suit was brought under section 2436b, of the Code by the life tenant against the remaindermen for the sale for reinvestment of 260 acres of land in Madison county, upon the allegation that it was located 20 miles from a railroad and was "more a burden than a source of profit." The assessed value of the property is $2,451.

With the acquiescence of the parties the court decreed a sale of the farm, at which sale the appellant became the purchaser at the price of $10,500. The sale was fairly made after due advertisement and in conformity to the decree. It was well attended, and upon competitive bidding the property was knocked down to appellant as the highest bidder at the price named. For alleged inadequacy of price, based upon the opinion of the commissioner and his recommendation that the sale be not confirmed, the court set aside the sale and decreed a resale of the land. After the expiration of the term at which this decree was rendered and notice of appeal had been given, an upset bid of $11,340 was offered. The party tendering the bid knew of the sale, and states that his inability to raise the cash payment at the time of sale prevented his becoming a bidder. In a letter accompanying the record, his honor, the circuit judge, expressed the opinion that it was not proper for him to consider this upset bid under the circumstances.

As opposed to the opinion of the commissioner that the farm sold for an inadequate price, appellant submitted to the trial court the affidavits of 14 landowners living in the vicinity, all of whom stated that $10,500 was a fair price for the property. It is insisted by appellees that the court could not consider these ex parte affidavits, but the practice in this jurisdiction is otherwise. Robertson v. Smith, 94 Va. 250, 252, 26 S. E. 579, 64 Am. St. Rep. 723. It has long been the course of decision in this court, when a sale has been regularly and fairly made in compliance with the decree of sale, not to disturb it upon the bare suggestion of inadequacy of price.

In Effinger v. Ralston, 21 Grat. (62 Va.) 430, 436, Moncure, P., delivering the opinion of the court, said:

"To induce a court to set aside a sale fairly made in pursuance of a decree, merely upon the ground of inadequacy of price, there ought to be a decided preponderance of evidence of such inadequacy, even if it be conceded that mere inadequacy of price is, in itself, a sufficient ground for setting aside such sale."

In Langyher v. Patterson, 77 Va. 470, it was held:

"Public policy requires that purchasers at such sales should be entitled to certainty and security of their rights under their purchases,

and that they should not be refused confirmation, simply because they may have got a good bargain."

In Hazlewood v. Forrer, 94 Va. 703, 27 S. E. 507, it was held:

"Where a judicial sale has been sufficiently advertised, well attended, and fairly conducted, it should not be set aside for inadequacy of price merely because the bill, which was filed three years before the sale, charged that the property was worth a much larger sum than it brought at the judicial sale."

In Moore v. Triplett, 96 Va. 603, 32 S. E. 50, 70 Am. St. Rep. 882, it was held:

"Whether a judicial sale should be confirmed or not depends upon the circumstances of the particular case. The court should exercise a sound legal discretion with a view to fairness, prudence, and just regard to the rights of all concerned. The action of the court should be such as to induce bidders to attend, and to encourage fair, open, and competitive bidding in order to obtain the highest possible price, and inspire confidence in the stability of judicial sales."

Upon the authority of these decisions the decree under review cannot be sustained. The circuit court was controlled alone by the opinion of the commissioner who made the sale, wholly unsupported by evidence, against the presumption in favor of the highest bid as a just criterion of the value of the property (Todd v. Gallego Mills, 84 Va. 591, 5 S. E. 696; Nitro-Phos. Syndicate v. Johnson, 100 Va. 774, 42 S. E. 995; Benet v. Ford, 113 Va. 442, 74 S. E. 394), and the uncontradicted evidence afforded by the affidavits of 14 responsible citizens and landowners, whose property either adjoined or lay in the immediate vicinity of the land in controversy, that it brought a fair price.

The following holdings in Benet v. Ford, supra, are pertinent to the present case:

"When the action of the court in confirming the sale of property under its control is complained of because of the inadequacy of the price, the burden is on the complaining party to show that he has been injured."

"If the grounds relied on for setting aside a judicial sale go to the very substance of the contract, such as fraud, accident, mistake, or misconduct on the part of the purchaser or other person connected with the sale, which has worked injustice to the party complaining, the rule governing in determining whether or not the sale shall be confirmed is very different from the rule controlling where the question is whether the price at which the property sold is entirely inadequate.

"The highest bid made at an open judicial sale, fairly conducted, after full notice, in the face of such competition as can be attracted, is a fair and just criterion of the value of the property at that time. After-stated opinions, affidavits of undervalue, and the like, are regarded with little favor, and are entitled to little weight in comparison with the fact established by the auction and its results."

The case of appellees would not be helped if the upset bid tendered after the term at which the decree was entered were considered. The advance bid was made by one cognizant of the time and place of the sale, and does not amount to 10 per cent. of appellant's bid. The later decisions of this court are all to the effect that it is error to set aside a judicial sale solely because an advance bid of 10 per cent. has been made. Litton v. Flanary, 116 Va. 710, 82 S. E. 692, and cases cited.

The decree complained of must be reversed, and the case remanded, with instructions to the circuit court to enter a decree confirming the sale made to appellant.

Reversed.

NOTE.—*Mere Inadequacy of Price as Ground for Setting Aside Judicial Sale.*—The instant case appears to go upon the theory, that a judicial sale, made after all substantial requirements in its making have been followed, must be confirmed, where the only objection to confirmation is inadequacy of price bid by successful bidder. The decisions in Virginia cited and excerpted from fully sustain this view. Indeed, we wonder how any other view could be taken, if any presumption is to be accorded to rights secured by regularity in procedure. It surely ought to be thought, that, if a sale is to be set aside purely upon the theory, that another opportunity for bidders is to be given, then creditors of the debtor take the entire chance of losing; and if a resale is upon a guarantee of at least as great an amount being bid as that in the prior sale, this makes a distinction between the ability and non-ability of the owner of property put up for sale to supply the guaranty. This has no place in general legal principle.

Thus in McDaniel v. Wetzel, 264 Ill. 242, 106 N. E. 209, 1916E 1140, the sale was set aside because of special circumstances. The court said: "There is no invariable rule of equity that relief will not be granted after a sheriff's deed has been made and where there are circumstances of irregularity in an execution sale, inadequacy of price will always be taken into consideration, and the court will take hold of serious irregularities or circumstances of unfairness toward the debtor in order to grant relief in a case where gross inadequacy is shown to exist." In the case it was recited that the property was the homestead of the debtor occupied by himself and family, and his individual interest was not the only thing to be taken into consideration and he tendered to the creditor the full amount of his bid, interest and all costs in the forcible entry and detainer suit the purchaser had brought. Considering that the purchaser would fail to hold property purchased "for a trifling consideration," all the circumstances mentioned strongly appealed to the court sitting as a court of equity. It might be added, additionally, that as general creditors had no interest in the homestead, the sale presumed nothing in their favor.

In Morton v. Wade, 175 Ky. 564, 194 S. W. 802, it is said that where mere inadequacy of price is not so great as to shock the conscience or create presumption of fraud, judicial sale must be confirmed, but slight circumstances may be seized upon as evidence to nullify the sale. In this case land sold for $8,300. There was testimony it was worth anywhere from $12,000 to $15,000 and was appraised for sale for $12,150. A first sale was set aside and on resale it was bid in for $9,501 and for this sale the appraisement was for $11,950. The purchaser at first sale appealed from the order setting it aside. It was said to be a principle in Kentucky decision that: "Such (judicial) sales will not be disturbed for mere inadequacy of price unless there has been such a sacrifice of the property as to import fraud. There must be either fraud or misconduct in someone connected with the sale; some surprise or misapprehension on the part of those interested, or of the officer who conducts the sale, or some irregularity in the proceedings or other circumstances attending it, conducing to show unfairness, before the chancellor will refuse to confirm this act of his commissioner."

In Layton v. Rhode Island Hospital Tr. Co., 205 Fed. 276, 125 C. C. A. 263, Eighth Circuit Court of Appeals holds that while a judicial sale will not be set aside for mere inadequacy of price, yet if the sale is accompanied even by slight circumstances, in the conduct of the successful bidder, they may operate to prevent its confirmation by a court.

The court said: "At a judicial sale the successful bidder buys subject to the approval of the court. Until confirmation he has no vested right free from its control. The sale will not be set aside for mere inadequacy of price, unless it is so gross as to shock the conscience; but it will be if great inadequacy is accompanied by slight circumstances of unfairness in his conduct. Ballentyne v. Smith, 205 U. S. 285. This is the general rule and its application depends upon the peculiar facts of the cases presented. Moreover, a court of equity possesses a power and discretion, not only for the protection of the rights of the particular parties, but also in the general administration of justice, to keep its processes fair and clean, and upon appeal much deference will be shown to its conclusions upon proof of fraudulent conduct."

While it is true that discretion is to be exercised in confirming or not a judicial sale. Parsons v. Little, 28 App. D. C. 218; Hall v. Taylor, 135 Ga. 606, 66 S. E. 478; Carr v. Carr, 88 Va. 735, 14 S. E. 368. Yet such discretion is to be exercised according to fixed rules and not arbitrarily. George v. Coul, 77 Ark. 216, 91 S. W. 557, 113 Am. St. Rep. 143; Quigley v. Breckenridge, 180 Ill. 627, 54 N. E. 580.

Mere inadequacy of price must be so gross and unreasonable as to indicate misconduct, fraud or some unfairness by a trustee under power of sale, before the sale may be set aside. Vollum v. Beall, 117 Md. 617, 83 Atl. 1095.

Generally it may be said, as one case holds, that it is difficult to lay down a general rule as to when a court will or will not refuse to confirm a judicial sale, as its exercise of discretion in this matter must in a great measure depend on the circumstances of each case. Moran v. Clark, 30 W. Va. 358, 4 S. E. 303, 8 Am. St. Rep. 66.

C.

BOOK REVIEW

POWELL ON LAND REGISTRATION.

The recent enactment by Georgia Legislature of a Land Registration Act proceeding along the general theory of the Torrens plan, has presented occasion to Honorable Arthur Gray Powell, formerly a judge of Georgia Court of Appeals, to respond to the request of his brothers of the Georgia bar to write a book on the subject embraced in the above caption.

Judge Powell was appointed in 1914 on a commission to put in form a bill to systematize land registration for Georgia. In this position he learned something of existing systems modeled on the Torrens plan, and presented the bill recently enacted for the State. This book, therefore, should be thought to speak quite authoritatively in construction of the Georgia Statute, and to be also a valuable work along the lines of principle in the enactment of the Georgia act.

The American Bar Association adopted a uniform act on this subject at its session in 1916 and this is reproduced as an appendix and statutes in several of the States based on the Torrens system are digested, none of them subsequent to action by the Association. Annotation is to those acts and to foreign legislation enacted since 1858 when the Australian act as prepared by Sir Richard Torrens was adopted.

The study of this system is very interesting and refers to land in endeavor to make it more a "liquid asset," than under the rules of common law and the practice prevailing in our States. The book is not only entertaining as a study, but it concerns a very practical problem not only for lawyers but for laymen as well.

The work by Judge Powell is a single volume, attractively presented in its binding of law buckram and issues from the well-known house of the Harrison Company, Law Book Publishers, Atlanta, Georgia. 1917.

CHASE ON LEMUEL SHAW, CHIEF JUSTICE.

Lemuel Shaw was the judge whose influence in the development of constitutional law was said to be second only to that of John Marshall. Had he held the same position as the latter, none of us can doubt that he would have expounded our great instrument

along the same constructive lines, and with as signal clarity and force. In Shaw's time the fugitive slave law was enforced by him in the midst of as great stress of popular opinion as any judge ever encountered and the legislation was upheld on constitutional grounds. There is no finer example of the courage of the judge upholding the law in troublous times than was shown by the great Chief Justice of Massachusetts' Supreme Federal Court in the enforcement of this slavery law.

The author of this book, Mr. Frederic Hathaway Chase, comes to his task of presenting the career of Judge Shaw in his personal and judicial career with an ardor that is truly refreshing. He paints the judge as the sympathetic human being, educated in simple American life, struggling as one of the common people for a bare existence, raised to competency as a lawyer and sacrificing the emoluments of practice at the call of duty. But he is not shown as being free from the ills flesh is heir to. Especially does it appear that often he procrastinated and often was unjustly stern upon the bench to lawyers appearing before him. Like Cromwell he is painted "wart and all," and we feel that while the majesty of his office is preserved, there was the human nature common to mankind back of his wonderful intellect.

His time was when Rufus Choate, Caleb Cushing, Benjamin R. Curtis and other great lawyers adorned their profession and we wonder how much they contributed to his great fame. At all events, his career is as memorable in American history as that of Sir Matthew Hale in English law, and both of them have lived in the jurisprudence of our country and that of the land from which we derive our system.

This very attractive book is in octavo size, bound in cloth, and hails from the house of Houghton-Mifflin Company, Boston and New York, 1918.

BOOKS RECEIVED.

American Digest, Annotated. Key Number Series, Vol. 3A. Continuing the Century Digest and the First and Second Decennial Digests. March 1, 1917, to July 31, 1917. Prepared and edited by the Editorial Staff of the American Digest System. St. Paul. West Publishing Co 1918. Price, $6.00. Review will follow.

HUMOR OF THE LAW.

"Pa, what's kleptomania?"

"Why—er—it means taking something you don't want."

"Was it kleptomania when I took the measles?"

After two months at Rockford, Private Nelson got his leave at last and made what he conceived to be the best use of his holiday by getting married.

On the journey back at the station he gave the gateman his marriage certificate in mistake for his return railway ticket.

The official studied it carefully, and then said:

"Yes, my boy, you've got a ticket for a long wearisome journey, but not on this road."

American soldiers gave for two visitors at a training camp, members of a famous Canadian regiment, who were home on sick leave, a fine "feed."

The sergeant had been carefully coached about giving the toast, but became flustered and this is what he made of it: "Here's to the gallant Eighth, last on the field and the first to leave it."

Silence reigned, then the corporal came gallantly to the rescue:

"Gentlemen," he began, "you must excuse the sergeant; he never could give a toast decently; he isn't used to public speaking. Now I'll give a toast: 'Here's to the gallant Eighth, equal to none.'"

Mr. Quibbles had engaged a new office boy. He was a raw-looking youth, but Mr. Quibbles prefers them that way; they aren't such an anxiety as the smart brand. One of Maddock's first tasks was to copy a letter and, as is the custom in lawyer's offices, the letter and copy were read over together. "Dear sir," read Maddock, "I beg to acknowledge the receipt of your letter of the 17th ult.—" "Maddock," interrupted Mr. Quibbles, "what does ult. mean?" For a moment an expression that was absolutely blank overspread the features of the new youth; then it cleared, and a smile of conscious knowledge took its place. "Please, sir," he said, "it's what they say to the soldiers when they want 'em to stop."

WEEKLY DIGEST

Weekly Digest of ALL the Important Opinions of ALL the State and Territorial Courts of Last Resort and of ALL the Federal Courts.

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1. **Accord and Satisfaction** — Evidence. — Where contractor signed voucher as "received on account" and after an indorsement qualifying his aceptance received the amount named in the estimate, the payment and acceptance was not an accord and satisfaction.—Lantry Contracting Co. v. Atchison, T. & S. F. Ry. Co., Kan., 172 Pac. 527.

2.——Evidence. — Where pursuant to agreement mortgaged property was appropriated in full satisfaction of debt, there was an accord and satisfaction, although note and mortgage were not returned and no receipt or release was issued.—Lilly v. Verser, Ark., 203 S. W. 31.

3. **Adverse Possession** — Evidence. — Where deed conveys two separate tracts, one farm land the other woodland, actual possession by the grantee of the farm land only is not sufficient to continue the grantor's adverse possession as to the woodland.—Sandmeyer v. Dolijsi, Tex., 203 S. W. 113.

4. **Alteration of Instruments**.— Change of Date.—Changing a date after its execution so as to postpone date of payment is a "material alteration," making note unenforceable against maker, who did not consent.—Wright v. O'Brien, Ind., 119 N. E. 469.

5. **Animals**—Stock Law.—Qualified voters of all territory to be affected by operation of local option stock law are entitled to vote, and law cannot be legally enforced against such voters, not given opportunity to vote at election.—Cowand v. State, Tex., 202 S. W. 961.

6. **Arbitration and Award**—Stipulations.—A proposal by an attorney, when entering into a contract of employment with his client, that he would suggest that the ultimate charge be fixed mutually by chosen appraisers, is not enforceable as a stipulation for arbitration; it being a mere suggestion, and no method being pointed out whereby the apprisers are to be chosen.—Mecartney v. Guardian Trust Co., Mo., 202 S. W. 1131.

7. **Attorney and Client**—Equity.—A court of chancery has general jurisdiction to enforce attorney's lien for compensation on the property recovered by him for his infant client.—Pace v. Richardson, Ark., 202 S. W. 852.

8.——Lien.—Attorneys who properly brought suit for an insane person by his next friend have a lien upon the cause of action for their fees.—Williams v. Gaither, Tenn., 202 S. W. 917.

9.——Lien.—As federal Employers' Liability Act authorizes actions in state courts and makes state practice applicable, Gen. St. Minn. 1913, § 4955, giving attorneys lien on cause of action of their clients, is properly applied to action brought in courts of that state under federal act where defendant settled claim with the client.—Dickinson v. Stiles U. S. S. C., 38 S. Ct. 415.

10.——Notice.—Code Civ. Proc. § 286, requiring party whose attorney withdraws, before further proceedings are had against him to be required in writing to appoint another attorney or appear in person, does not apply when client serves notice that he appears in person, since giving notice would be futile.—Unwin v. Barstow-San Antonio Oil Co., Cal., 172 Pac. 662.

11.——Quantum Meruit. — That an attorney, suing for his fees, states in his complaint the contract of employment and gives in detail all the circumstances relating thereto, does not deprive him of recovery in quantum meruit.—Mecartney v. Guardian Trust Co., Mo., 202 S. W. 1131.

12. **Banks and Banking**—Forgery.—Payment of check upon which payee's signature has been forged is not acceptance by drawee, completing assignment pro tanto of drawer's deposit.—State v. Bank of Commerce, Ark., 202 S. W. 834.

13. **Bills and Notes**—Guarantor.—A person who signed his name on the back of a nonnegotiable note was a guarantor, and not an indorser in the sense of the law merchant.—Weems v. Neblett, Tenn., 202 S. W. 930.

14.——Special Fund.—Where a payee sued on notes and contract with maker that the notes should be paid only out of a special fund to be recovered by maker as a set-off against his vendor's mortgage, evidence that the claim was disallowed, and that through error the maker did not pay the full amount of the mortgage and costs upon foreclosure, is insufficient to entitle plaintiffs to recover.—Sides v. Knox, Tex., 203 S. W. 65.

15. **Brokers** — Performance. — When broker agrees to "consummate" exchange of land within 30 days, he has done his part by bringing parties together so that his principal could have carried through deal in such time.—Turner v. Watkins, Cal., 172 Pac. 620.

16. **Cancellation of Instruments**—Appeal and Error.—Where a deed by a mortgagor to the creditor was set aside as having been obtained without adequate consideration and under undue influence, it was not error to restore the creditor to his former condition, giving him the benefit of the security of the mortgage, which was given up in consideration of the conveyance.—Boal v. Gassen, Cal., 172 Pac. 588.

17. **Carriers of Goods** — Computing Loss. — Having contracted that amount of loss shall be computed on value of property at place and time of shipment, the shipper can recover for loss from delay only the difference between such value and the salvage price, plus any charges paid.—Keeney v. Chicago, B. & Q. Ry. Co., Iowa, 167 N. W. 475.

18.——Overcharge. — Where Interstate Commerce Commission held that claim for overcharges could not be considered because complaint for recovery was not made within two years from time cause of action accrued, holding of Commission must be interpreted, not as one that it had jurisdiction over claim and that it was barred by limitations, but that claim was without its jurisdiction.—United States ex rel. Louisville Cement Co. v. Interstate Commerce Commission, U. S. S. C., 38 S. Ct. 408.

19. **Carriers of Live Stock**—Car Shortage.—A carrier knowing of a car shortage cannot evade its obligation to furnish cars for hogs where it so contracted, where it did not notify the shipper of such shortage, to the shipper's damage, by showing that it would have been a discrimination against other shippers.—Texas Midland R. R. v. O'Kelley, Tex., 203 S. W. 152.

20. **Carriers of Passengers** — Negligence. — Breach of carrier's obligation to passenger with resulting injury stands on different plane than one arising from injury by mere negligence, and by reason of the special and personal obligation growing out of the relation, carrier's conduct injuring only feelings and sensibilities of passenger is actionable.—John's v. Baltimore & O. R. Co., W. Va., 95 S. E. 589.

21.——Res Ipsa Loquitur.—The doctrine of res ipsa loquitur, as applied to the sudden starting of a passenger coach, warrants or authorizes an inference or assumption that sudden starting was due to negligence of those controlling train, but does not compel such inference or presumption.—Williamson v. Salt Lake & O. Ry. Co., Utah, 172 Pac. 680.

22. **Commerce**—Employes.—An electrical engineer employed to instruct railroad motorman in interstate business was engaged in interstate commerce within federal Employers' Liability Act.—Dumphy v. Norfolk & W. Ry. Co., W. Va., 95 S. E. 863.

23.——Foreign Corporation.—Act May 13, 1907 (Laws 1907, p. 744), prohibiting foreign corporations from doing business in the state until certain regulations have been complied with, does not apply to foreign corporations engaged in selling goods in interstate commerce.—W. T. Rawleigh Medical Co. v. Rose, Ark., 202 S. W. 849.

24.——Original Package. — Where cigarettes in the original packages come to rest in the hands of a dealer whose custom has been, and whose intent is, to break the packages and sell them, they are no longer interstate commerce, and are subject to seizure under Code, § 5006, and Code Supp. 1913, § 5007a.—State v. C. C. Taft Co., Iowa, 167 N. W. 467.

25.——Safety Appliance Act.—In view of the federal Safety Appliance Act of March 2, 1903, mere fact that car at moment of injury was not engaged in interstate commerce did not preclude recovery, where railroad was engaged in interstate commerce.—Texas & P. Ry. Co. v. Sprole, Tex., 202 S. W. 985.

26. **Contracts** — Evidence. — Chief engineer's order, that posts be reset with foundations instead of on floor of tunnel and his blueprint of such work, met contract requirement that extra work must be done on written order.—Lantry Contracting Co. v. Atchison, T. & S. F. Ry. Co., Kan., 172 Pac. 527.

27. **Corporations**—Charter.—The word "etc." in a corporation's statement of corporate purposes held not to include the right to purchase and sell realty.—State on Inf. of Haw v. Three States Lumber Co., Mo., 202 S. W. 1083.

28.——Foreign Corporation.—Where defendant gave order for machinery to a third person, who without authorization transmitted it to foreign corporation, and after the machine arrived defendant agreed to and did give a new order "on the terms stipulated in the original order," there was a ratification of the interstate contract which permitted recovery by the foreign corporation, although it had received no permit to do business within the state.—Dempster Mill Mfg. Co. v. Humphries, Tex., 202 S. W. 981.

29.——Insolvency.—In corporation insolvency proceedings, where court has made order for redelivery of property to seller thereof on condition of surrender of unpaid notes, corporation's receiver has no power to modify such order by allowing seller to retake property without surrender of notes.—Hanson v. Chicago & L. S. Ry. Co., Wis., 167 S. W. 450.

30.——False Representations. — Measure of damages for false representations concerning corporate stock is difference between actual value at time of transaction and what it would have been worth at time of transaction if representations were true.—Sankey v. United Mercantile Agency, S. D., 167 N. W. 493.

31.——Ratification.—Where corporation's note was issued without its authority or knowledge, by its president and secretary in lieu of president's personal note, and act was not ratified by corporation, and payee was presumed to know that corporation's consent thereto was required, corporation was not estopped to defend for illegality and lack of consideration.—Hoffman v. M. Gottstein Inv. Co., Wash., 172 Pac. 573.

32.——Ultra Vires.—A brewery company cannot defend against its guarantee of a lease on ground that its vice-president had no authority to execute the same, where consideration for guaranty was lessee's renting part of premises for saloon selling only defendant's beer, which was carried out in good faith.—Standard Brewery v. Creedon, Ill., 119 N. E. 581.

33. **Curtesy**—Husband's Estate.—Where husband pays for lands, directing grantor to convey them to the wife, he acquires an estate by the curtesy consummate in such lands of his intestate wife, although no agreement between them, nor provision in the deed, dealt with curtesy.—Hull v. Hull, Tenn., 202 S. W. 914.

34.——Married Woman's Act.—Where the husband at the effective date of Married Woman's Emancipation Act had only an estate by the curtesy initiate, which was not a vested right since his wife was then living, the Legislature could pass such act depriving him of all contingent rights to curtesy.—Day v. Burgess, Tenn., 202 S. W. 911.

35. **Damages** — Earnings. — A farmer whose business was to oversee operations on his own land and other lands held by him under lease, who sued a railroad and claimed damages "by reason of said injuries to his person" and for the destruction of his automobile in collision, could not prove loss of earnings, not having

specially pleaded it.—Armstrong v. Spokane International Ry. Co., Wash., 172 Pac. 578.

36.——Limiting Liability.—An agreement limiting recovery of damages for injuries to a shipment of rugs in bales to $50 held invalid for want of consideration; there being no alternative rate for rugs so packed for the shipper to choose, and hence no consideration supporting the contract.—Der Bogosian v. Atchison, T. & S. F. Ry. Co., Mo., 202 S. W. 1078.

37. **Death** — Recovery for. — Recovery under federal Employers' Liability Act, being limited to pecuniary loss to beneficiaries, is to be computed by discounting lost future benefits at fair rate at which money might be loaned or invested safely at interest for each year of life expectancy.—Jones v. Kansas City Southern Ry. Co., La., 78 So. 568.

38. **Deeds**—Reverter.—Although a deed to a daughter and heirs of her body provided that, in case of death of daughter without issue, lands should revert to grantor or his heirs, grantee's only son became vested with a fee on her death, making attempted reversion to grantor or his heirs of no effect in view of Rev. St. 1909, § 2872, abolishing estates tail.—Elsea v. Smith, Mo., 202 S. W. 1071.

39. **Easements**—Parking Automobile.—Where owner granted part of a tract to plaintiff, reserving to himself, heirs, and assigns the right of "using and occupying" a certain strip "as a street," a grantee of a lot on the opposite side of such strip, running a garage, is not entitled to park automobiles in, or otherwise obstruct, such strip, which is being used as an alley by plaintiff.—Alexander v. Auten's Auto Hire, N. C., 95 S. E. 850.

40. **Eminent Domain**—Estoppel.—Landowner, entitled to warrant for condemnation money and submitting to county board the question whether he or his grantee was entitled to warrant, after its delivery of warrant to grantee, was estopped from suing board to recover amount of warrant.—Lillard v. Board of County Com'rs of Johnson County, Kan., 172 Pac. 518.

41. **Estoppel**—Reservation of Rights.—Where defendant sold plaintiff land to which he had no title and reserved the mineral rights, and plaintiff afterwards bought from the owner and sued defendant for claiming mineral rights, defendant's plea of estoppel, based on declarations in defendant's deed reserving mineral rights, held not well founded since plaintiff was not claiming under title conveyed by defendant.—Wilson v. Pierson, La., 78 So. 561.

42. **Explosives**—Injury to Child.—Owner of business mining marl near station and town, who maintained unlocked shed in which dynamite caps were stored, around which children were seen playing, and to which path led from road, was liable when seven-year-old boy took dynamite caps and was injured by explosion.—Krachanake v. Acme Mfg. Co., N. C., 95 S. E. 851.

43. **Fish**—Clam Beds.—Because of the peculiar characteristics of the clam — its fixed habitation when imbedded in the soil—clam beds may become subject of private ownership, which passes to grantee by conveyance from state of tidelands in which beds are located.—State v. Vlack, Wash., 172 Pac. 563.

44. **Fraud**—False Representations.—The seller's representations as to net income and value of good will being untrue, the purchaser's measure of damages was the difference between the net value of the business as it was and the net value of the business as it was represented to be, and in addition thereto the value of the good will of the business as represented.—Stanton v. Zercher, Wash., 172 Pac. 559.

45. **Husband and Wife** — Entirety. — Where wife holding property by the entireties with her husband signed a mortgage, she is a principal with her husband if the consideration is applied to the discharge of an incumbrance resting on some apparent foundation, and where she has exercised her judgment she cannot be relieved because disappointed in the result.—McKay v. Corwine, Ind., 119 N. E. 471.

46. **Frauds, Statute of** — Estoppel. — Where land is conveyed by a warranty deed containing no reservations, but grantor by parol reserves the right to remove a house sold to another prior to the conveyance, grantee is not estopped to assert the statute of frauds, where his promise to permit removal of house was not made with fraudulent intent.—Robbins v. Winters, Tex., 203 S. W. 149.

47. **Gaming**—Gambling Device. — A slot machine, in which one places a nickel, works a lever, gets 5 cents' worth of gum, and, according to the number on which the indicator stops, none or from 2 to 20 chips, good in trade, is a gambling machine, within the prohibition of Ky. St. §§ 1960, 1967.—Commonwealth v. Gritten, Ky., 202 S. W. 884.

48.——Gambling Device. — A punch board worked by buying a post card for more than it is worth, punching any of the covered holes, and getting merchandise varying in value, or nothing, according to the number in the hole, and on a corresponding schedule, is a gambling machine, within the prohibition of Ky. St. §§ 1960, 1967.—Commonwealth v. Gritten, Ky., 202 S. W. 884.

49. **Highways** — Obstructions.—The liability of owner of land abutting on a highway by prescription or sufferance for obstructions or other damages to travel is generally confined to beaten or traveled track.—Rozell v. Northern Pac. Ry. Co., N. D., 167 N. W. 489.

50. **Homicide** — Self-Defense. — A charge on self-defense that, if the jury should find that the situation or happenings were such as to lead a "prudent and cautious" man to believe he was in danger, though he were not, the law would not hold him liable, held reversible error for not qualifying the quoted words by the word "reasonably."—Hunt-Berlin Coal Co. v. Paton, Tenn., 202 S. W. 935.

51. **Infants**—Disaffirmance.—A child, who has in writing released his right of inheritance in his father's estate in consideration of an advancement, cannot, after attaining majority and waiting a number of years until his father's death, disaffirm his act.—Adams v. Adams, W. Va., 95 S. E. 859.

52. **Insane Person**—Next Friend.—Next friend bringing a suit for an insane person is in a sense a volunteer, and the court of pendency may at any time investigate his fitness to represent the incompetent's interests, may substitute another, and will ordinarily substitute a subsequently appointed guardian upon application.—Williams v. Gaither, Tenn., 202 S. W. 917.

53. **Insurance**—Agency. — Where assignment of fire policy after loss was made in presence of policy writing agent, and draft in payment of loss was sent him, indorsed by property owner and used by owner and agent in paying other creditors than the assignee, the latter could recover from insurance company the amount of his claim; agent's knowledge being imputed to the company.—Schwabacher Bros. & Co. v. Orient Ins. Co., Wash., 172 Pac. 568.

54.——Conspiracy. — Where a fire insurance agent refused to write insurance for an individual, and agreed to enter into conspiracy with other insurance companies to prevent such individual from obtaining insurance, his act did not bind his principal.—Palatine Ins. Co. v. Griffin, Tex., 202 S. W. 1014.

55.——Divorced Wife. — Wife, never legally married to her husband, but divorced from him, and who was beneficiary in insurance policy on life of her nominal husband, cannot thereafter keep policy alive by payment of premiums; she having no insurable interest in his life.—Western & Southern Life Ins. Co. v. Nagel, Ky., 203 S. W. 192.

56.——Double Indemnity.—Insured, who was killed by sudden starting of his automobile while he was standing on the ground cranking the same with his right hand to start engine to finish a trip, was not "in" or "on" automobile within policy providing for double indemnity for injuries sustained while "in" or "on" a private conveyance, in view of rule of construction prescribed by Rev. St. 1909, § 8057.—Turner v. Fidelity & Casualty Co. of New York, Mo., 202 S. W. 1078.

57.——A foreign insurance company cannot be called to an accounting within this state, where such accounting involves matters of its internal management within its home state.—Spring v. Fidelity Mut. Life Ins. Co., N. Y., 170 N. Y. S. 253.

58.——Fraternal Society.—Where insured under fraternal benefit policy disappeared without evidence of death, and his sisters, on representations of the local officers that the insurance would be continued, paid the monthly assessments and dues, no cause of action in their favor accrued until after their demand for the premiums or the face of the policy and refusal thereof.—White v. Brotherhood of Locomotive Firemen and Enginemen, Wis., 167 N. W. 457.

59.——Indemnity Company.—Where indemnity company refused to defend suit as specifically agreed in separate paragraph in policy, and insured had to employ attorneys and others to defend, insured could recover obligations so incurred, although not yet paid, regardless of no action clause in policy, providing liability only for money actually expended.—Western Indemnity Co. v. Walker-Smith Co., Tex., 203 S. W. 93.

60.——Waiver.—Insurer of piano, having paid amount of loss on piano to insured after his notice to it to pay part to seller of piano, who retained mortgage on piano, and after garnishment by seller, could not avail itself of plea of exemption of such insurance proceeds, it having been waived by such debtor's notice.—Westchester Fire Ins. Co. v. Thomas Groggan & Bro., Tex., 203 S. W. 163.

61. **Instructions** — Negligence.—Where gas company assumed, on complaint of its customer, to make repairs on her gas range, if it made them faultily or negligently, it was liable for any injury resulting.—Pernick v. Central Union Gas Co., N. Y., 170 N. Y. S. 245.

62. **Joint Adventures** — Partnership.—Where plaintiff, who contributed his skill in manufacturing fur garments, and defendant, who provided a shop, purchased furs, etc., were partners or joint adventurers, an accounting was necessary, where defendant breached his agreement before time for division of net profits.—Butler v. Union Trust Co., Cal., 172 Pac. 601.

63. **Judgment** — Full Faith and Credit. — In view of Civ. Code La., arts. 420, 421, one interdicted by Louisiana state court, having removed to Tennessee and there being adjudged competent, cannot, by bill in federal court, compel Louisiana executor of estate in which he was interested to account for Tennessee judgment, despite full faith and credit clause, had no extraterritorial effect.—Gasquet v. Fenner, U. S. S. C., 38 S. Ct. 416.

64. **Landlord and Tenant**—Renewal of Lease. —Where company had right to renew lease by making deposit in bank, and it made deposit, which lessors refused to accept, first as insufficient, second as too late, lessors were under no obligation to do more than inform bank of their unwillingness to accept.—Pure Oil Operating Co. v. Gulf Refining Co. of Louisiana, La., 78 So. 560.

65. **Larceny**—Indictment.—Where an indictment charges theft of an automobile in one count, and receiving the automobile as stolen property in another count, a verdict, finding defendant guilty on both counts is improper; it being impossible for defendant, guilty of receiving a stolen automobile, to have stolen it himself.—Moore v. State, Tex., 203 S. W. 51.

66. **Libel and Slander**—Privileged Communications.—Communications passing between state agents of fire insurance companies and the local agents, and communications from one insurance company to another, with reference to matters wherein the companies are mutually interested, and to protect such interest, are conditionally privileged.—Palatine Ins. Co. v. Griffin, Tex., 202 S. W. 1014.

67.——Slander of Title.—In an action for slander of title, defendant, who does not deny plaintiff's possession or right of action, must either admit or deny the alleged slander, or his dispute of plaintiff's title; and, if he claims a real right in property, he puts in issue validity of his claim.—Wilson v. Pierson, La., 78 So. 561.

68. **Mandamus**—Jurisdiction.—Supreme Court of District of Columbia in proper case has power to direct Interstate Commerce Commission by mandamus to entertain and proceed to adjudicate cause, which it has erroneously declared not to be within its jurisdiction.—United States ex rel. Louisville Cement Co. v. Interstate Commerce Commission, U. S. S. C., 38 S. Ct. 408.

69. **Master and Servant**—Assumption of Risk. —Pullman porter's employment contract, assuming "all risks of accident or casualties while employed on or about cars" of the company "incident to such employment," would not relieve company for liability for injury to porter suffered in resisting being ejected from his car by watchmen who had been instructed by company to put off any one found on car, porter having been instructed to remain on car and not notified of conflicting instructions given watchmen.—Pullman Co. v. Ransaw, Tex., 203 S. W. 122.

70.——Collision. — Evidence that defendant owned the automobile which was driven by her minor son, though not establishing liability of defendant, calls for explanation from defendant in an action for injuries in a collision with such automobile.—Wilson v. Polk, N. C., 95 S. E. 849.

71.——Evidence. — Under federal Employers' Liability Act, a railroad is negligent where engineer refuses or neglects to obey orders of superior to stop or slow down to pick up employe engaged in interstate commerce who relies upon such order, or where engineers so negligently manages train as to injure such employe lawfully thereon.—Dumphy v. Norfolk & W. Ry. Co., W. Va., 95 S. E. 863.

72.——Liability. — Where foreman, with employer's knowledge and approval, placed crews in charge of particular members, it was immaterial that such members were not called foremen if they discharged functions of foremen, and their negligence in not making reasonable provision for safety of crew would render employer liable.—Miller v. Tall Timber Co., La., 78 So. 555.

73.——Workmen's Compensation Act.—Where it appears that a company sued for personal injuries by its servant employs more than five servants, it is subject to the Workmen's Compensation Act, whether a subscriber or not, and consequently cannot plead assumption of risk. —Wichita Falls Motor Co. v. Meade, Tex., 203 S. W. 71.

74.——Workmen's Compensation Act. — In a proceeeding under the Workmen's Compensation Act, that the person injured was engaged in underdressing a stone according to marks made by the original contractor's superintendent did not show him to be an employe, instead of a subcontractor.—Mobley v. J. S. Rogers, Ind., 119 N. E. 477.

75. **Mines and Minerals**—Forfeiture.—Refusal to accept check in amount less than lease required to excuse operation on land, reduction being made for alleged defective title, did not warrant lessor's immediate forfeiture, and release to another, and equity would relieve against forfeiture and cancel subsequent lease. —Monarch Gas Co. v. Roy, W. Va., 95 S. E. 789.

76. **Monopolies** — Employment Contract. — Company's contract for sale of merchandise to its agent, wherein agent agreed "to have no other business or employment," not only required him to devote his entire time, but restricted him to making purchases of merchandise from company only, and so was violative of anti-tru . act.—Dodd v. W. T. Rawleigh Co., Tex., 203 S. W. 131.

77. **Mortgages**—Bona Fide Purchaser.—Bona fide purchasers from indorsee of part of series of notes secured by trust deed are not affected by collateral oral agreement between payee and his indorsee, by which notes retained have priority of payment over those indorsed, in absence of notice to purchasers of such agreement, but they are entitled to share pro rata.—Green v. Morris, Miss., 78 So. 550.

78. **Municipal Corporations**—Counterclaim. — Where a city counterclaims for contractor's failure to pay labor and materialmen's claims in a contractor's action for a municipal improvement, all unpaid claims for material and labor may be established.—New York Continental Jewell Filtration Co. v. City of Kenosha, Wis., 167 N. W. 451.

79.——Right to Office.—Mere fact that city marshal's bond had expired did not forfeit his

right to the office, where he was permitted to continue to act, and was therefore a de facto officer at least, and entitled to a compensation, especially since the city authorities could at any time on notice have required a bond.—Henriod v. Church, Utah, 172 Pac. 701.

80. **Negligence**—Imputability.—The negligent failure of the driver of an automobile to yield the right of way to a street car, as required by city ordinance, resulting in a collision, is not imputable, as a matter of law, to one riding as a mere guest.—El Paso Electric Ry. Co. v. Benjamin, Tex., 202 S. W. 996.

81. **Oil and Gas**—Drilling Wells.—In an oil and gas lease providing that, "when a well is once begun, the drilling thereof shall be prosecuted with due diligence until same is completed," word "completed" means finished, or sunk to the depth necessary to find oil or gas in paying quantities or to such a depth as would reasonably preclude probability of finding it at further depth.—Frost v. Martin, Tex., 203 S. W. 72.

82. **Parent and Child**—Emancipation.—Where plaintiffs' father died before United States acquired Philippine Islands, and their mother during their minority emancipated them, held, she must be deemed to have had administration of plaintiffs, under Civ. Code, art. 159, and so validity of their emancipation was not open to attack, on theory that there was no pending administration saved by subsequently enacted Code Civ. Proc. § 581.—Aldecoa v. Hongkong & Shanghai Banking Corp., U. S. S. C., 38 S. Ct. 410.

83. **Perpetuities** — Rule Against.—A deed in trust granting to the trustee and the beneficiaries and their heirs and assigns forever, requiring the trustee to pay rents to the beneficiaries and preventing division of land until the youngest child of the beneficiary should become of age, did not violate the law against perpetuities.—Whitely v. Babcock, Mo., 202 S. W. 1081.

84. **Principal and Agent**—Scope of Agency.—A drayman employed by buyer of hay to cart the hay to be turned over to him by seller has no authority to refuse to accept the hay because of its condition, and acceptance by drayman of hay for carting purposes does not constitute acceptance by buyer.—Sevier v. Hopkins, Wash., 172 Pac. 550.

85. **Railroads** — Ordinance. — For breach of condition in ordinance for railroad entering city, that it shall make and maintain suitable means for draining under its track, the city, on company's denying duty and refusing to act, may contract for the work, and charge the company with the cost.—Illinois Cent. R. Co. v. Meacham Contracting Co., Ky., 202 S. W. 859.

86.——Fencing.—Statutory requirement as to fencing railroad is not solely for benefit of adjacent landowner, but for benefit of public in general, being police regulation for safety of passengers, trainmen, etc., so that agreement with landowner dispensing with fences at place required by statute is binding only on landowner, and not on his successor in title.—Hawkins v. St. Louis & San Francisco Ry. Co., Mo., 202 S. W. 1060.

87. **Removal of Causes**—Interstate Commerce.—Though defendant refrigerator company was not a common carrier, held, that its liability depended on contract with railroad company, and not Interstate Commerce Act; hence, though it did not fall within Judicial Code, § 28, as amended by Act Jan. 20, 1914, c. 11, defendant could not remove from state court a suit against it for less than $3,000 on ground that it was governed by act of Congress.—E. H. Emery & Co. v. American Refrigerator Transit Co., U. S. S. C., 38 S. Ct. 414.

88. **Replevin** — Counterclaim. — Ordinarily, counterclaims, or counter demands, cannot be litigated in replevin; but where seller sues to recover possession of automobile sold conditionally, and buyer tenders amount due in court, he may reduce the seller's claim to the extent of damage incurred on account of a defective top.—Beck v. Lee, Utah, 172 Pac. 686.

89. **Sales**—Conditional Sale.—Under contract of sale providing for return for credit in good condition within 35 days if directions for use were followed and results were not satisfactory, return must be within that time.—International Filter Co. v. La Grange Ice & Fuel Co., Ga., 95 S. E. 736.

90.——Fraud.—Where seller under contract to sell hay in first-class condition, finely cut, mixed wet hay and snow with the rest of the hay, causing it to spoil while in transit, he perpetrated a fraud on buyer, who had no knowledge thereof until after payment and acceptance of hay.—Sevier v. Hopkins, Wash., 172 Pac. 550.

91.——Purchaser for Value. — Purchaser of personal property, giving his negotiable notes, and having notice of vendor's lack of title before notes are paid or transferred by vendor to innocent party, is not a purchaser for value without notice, within the recording statutes.—Welch v. King, W. Va., 95 S. E. 844.

92. **Searches and Seizures** — Impounding by Court.—Where president of corporation testifying in his behalf in infringement suit produced exhibits which were impounded by order of court, he cannot, on theory that it would amount to unlawful search and seizure, prevent United States attorney from obtaining possession of exhibits for use in prosecution against president for alleged perjuries committed in infringement suit.—Perlman v. United States, U. S. S. C., 38 S. Ct. 417.

93. **Street Railroads** — Look and Listen.—An ordinance providing that drivers shall look out for and give right of way to vehicles approaching street crossings from the driver's right does not relieve a motorman from the duty to look out for an automobile approaching from his left.—El Paso Electric Ry. Co. v. Benjamin, Tex., 202 S. W. 996.

94. **Trusts** — Bankruptcy.—Where trustee in bankruptcy of beneficiaries of trust estate sought to subject their interests to payment of debts, allowance of attorney's fees of $1,000 to attorney who successfully defended in two trials and two appeals against such suit which was agreed to by the trustees, recommended by the commissioner, and approved by the chancellor, was not excessive.—Hackett's Ex'rs v. Hackett's Devisees, Ky., 202 S. W. 864.

95.——Following Principal. — If agent uses money of his principal in the purchase of property which is held by the agent and his wife in an estate by the entireties, the principal can follow such money into such real estate.—McKay v. Corwine, Ind., 119 N. E. 471.

96. **Warehouseman** — Jury Question.—Where storage company submitted new contract for new year, and customer delayed answer until year had nearly expired, accepting services with knowledge storage company was refusing to do business under contract for year before, there was no presumption of continuance of contract, but the question was for the jury.—Merchants' Transfer & Storage Co. v. Emerson-Brantingham Implement Co., Iowa, 167 N. W. 472.

97. **Waters and Water Courses** — Surface Water.—Overflow water, that escapes the banks of a running stream and does not return to its banks, nor find its way to another stream or water course, is surface water.—Anderson v. Chicago, B. & Q. R. Co., Neb., 167 N. W. 559.

98. **Wills** — Erasures. — Where alleged will consisted of list of items of property, and opposite one item words "For Ev and Anna" appearing to be written over erasure, and were only words showing testamentary intent, finding that maker did not intend it to take effect as will was justified.—McGrory v. Fisher, Pa., 103 Atl. 589.

99.——Later Born Child.—Under will, provision that testator's daughter and her three named children should have exclusive possession and benefit of testator's lands until the youngest reached 21 years, later born child of daughter, now deceased, is not entitled to share in rents and profits of land before time fixed.—Adams v. Hudson, Miss., 78 So. 545.

100.——Proviso.—A proviso in a will which is a limitation of a preceding general provision will be held to limit the immediate clause or general statement, unless it clearly appears from the whole sentence preceding such proviso that the proviso was intended to refer to the whole general provision.—In re Bovier's Estate, Utah, 172 Pac. 683.